

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

CLAUDE GENE LEE, SR.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO. 1:06-CV-874-MHT
	)	
WESTPOINT HOME, INC.,	)	
	)	
Defendant.	)	

**MOTION TO RECONSIDER ALLOWING DEFENDANT TO FILE A REPLY  
BRIEF AND ADDITIONAL EVIDENCE IN SUPPORT OF ITS MOTION FOR  
SUMMARY JUDGMENT**

COMES NOW the Plaintiff, Claude Gene Lee, Sr., by and through his attorney of record, Jay E. Tidwell, and respectfully moves this Court to reconsider Your Honor's Order allowing Defendants to file a reply brief and additional evidence, and as grounds therefore states as follows:

1. The dispositive motion deadline has long since passed. The deadline for filing for a dispositive motion was 06/07/2007. The parties agreed to this date and Your Honor ordered this date.

2. After Westpoint filed their motion for summary judgment, Your Honor ordered the summary judgment be set for submission, without oral argument, on July 6, 2007, with any opposing brief and evidentiary materials due by that date. Mr. Lee filed a response in opposition to Westpoint's Motion for Summary Judgment on July 6, 2007.

3. Westpoint had ample time to conduct discovery, including taking the deposition of Mr. Lee, prior to filing the Motion for Summary Judgment on

June 7, 2007. Westpoint made the decision not to depose Mr. Lee until July 17, 2007, over one month after the dispositive motion deadline. Mr. Lee was available to be deposed prior to the June 7, 2007 summary judgment dispositive motion deadline.

4. After taking Mr. Lee's deposition and receiving the transcript, Westpoint waited approximately two months to ask for leave to file a reply brief and additional evidence. The deadline for filing any such brief and additional evidence has long since passed. It is now over three months past the deadline.

5. This motion is due to be dismissed because it is untimely and it is on the eve of trial. If Westpoint were to be allowed to file a reply brief and additional evidence in support of its Motion for Summary Judgment, Mr. Lee would request he be allowed to file a supplemental brief as well.

6. In addition, allowing the Defendant to supplement at this late stage would create a grave injustice to Mr. Lee because the dispositive motion deadline has long since expired, and, in addition, the deadline for conducting discovery has also expired. If Westpoint is allowed to supplement its brief, the scheduling order would be pointless. Both parties have complied with the scheduling order and it should not be altered.

7. As for Westpoint wanting to clarify the record regarding the closing of its plant, Westpoint's plans to close its plant are irrelevant to its Motion for Summary Judgment. That has no bearing on any issue in the Motion for Summary Judgment.

WHEREFORE, premises considered, Mr. Lee respectfully moves this Court to reconsider granting Westpoint's Motion for Leave to File a Reply Brief and Additional Evidence in Support of Its Motion for Summary Judgment.

/s/Jay E. Tidwell  
Jay E. Tidwell (TID009)

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CERTIFICATE OF SERVICE

I hereby certify that on the 10<sup>th</sup> day of September 2007, I have served a copy of the above and foregoing on counsel for all parties by:

- \_\_\_\_\_ Facsimile transmission;
- \_\_\_\_\_ Hand Delivery ( will be attempted at trial);
- \_\_\_\_\_ Placing a copy of same in the United States Mail, properly addressed and first class postage prepaid to:
- X   Using the CM/ECF system which will send notifications of such to the following:

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